

SUMMONS	
District Court: Second Bernalillo County, New Mexico Court Address: 400 Lomas Blvd. NW Albuquerque, NM 87102 Court Telephone Number: 505-841-7421	Case Number: CV 2020 0 4 6 5 2 Judge: BENJAMIN CHAVEZ
Plaintiff(s): Peter Strojnik v. Historic Hotel, LLC dba Hotel Andaluz Defendant(s): Albuquerque, Curio Collection by Hilton	Defendant Name: Historic Hotel, LLC dba Hotel Andaluz Albuquerque, Curio Collection by Hilton Address: c/o- Registered Agent: Gary Goodman 100 Sun Avenue NE, Suite 210, Albuquerque, NM 87109

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.

2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.

3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.

4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.

5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.

6. If you need an interpreter, you must ask for one in writing.

7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

Dated at _____, New Mexico, this _____ day of _____, 20____.

AUG 13 2020

CLERK OF COURT

By: _____

Deputy

Attorney for Plaintiff or

Plaintiff pro se

Name: Peter Strojnik

Address: 7847 N. Central Avenue

Telephone No.: 602-524-6602

Fax No.:

Email Address: ps@strojnik.com



THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 NMRA OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS

Form 12-50113

RETURN¹

STATE OF NEW MEXICO)
)ss
 COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ *(used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)*

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA *(used when service is by mail or commercial courier service)*.

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, *(used when the defendant is not presently at place of abode)* and by mailing by first class mail to the defendant at _____ *(insert defendant's last known mailing address)* a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ *(insert defendant's business address)* and by mailing the summons and complaint by first class mail to the defendant at _____ *(insert defendant's last known mailing address)*.

☐ to _____, an agent authorized to receive service of process for defendant _____.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ *(used when defendant is a minor or an incompetent person)*.

☐ to _____ *(name of person)*, _____ *(title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision)*.

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, 20____.

Judge, notary or other officer
authorized to administer oaths

Official title

DO NOT FILE THIS PAGE: FOR PARTY USE ONLY

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]

ENDORSED
FILED IN MY OFFICE THIS
AUG 13 2020

CLERK DISTRICT COURT
Luke Lessman

Peter Strojnik,
7847 N. Central Avenue
Phoenix, Arizona 85020
Telephone: (602) 524-6602
ps@strojnik.com

IN THE STATE OF NEW MEXICO
2ND JUDICIAL DISTRICT BERNALILLO COUNTY

Case No: CV 2020 0 4 6 5 2

PETER STROJNIK,
Plaintiff,

COMPLAINT
SUMMONS ISSUED

vs.

HISTORIC HOTEL, LLC dba HOTEL
ANDALUZ ALBUQUERQUE, CURIO
COLLECTION BY HILTON

Defendant.

1. Plaintiff brings this action pursuant to the (1) Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design ("ADAAG"), (2) New Mexico's Unfair Trade Practices Act and Brand Deceit, and (3) common law of negligence and/or negligence per se.

PARTIES

2. Plaintiff Peter Strojnik is an immigrant, a disabled veteran and a senior citizen.
3. At all times relevant hereto, Plaintiff suffered from the following physical disabilities: prostate cancer, genitourinary impairment, renal cancer, severe right-sided neural foraminal stenosis with symptoms of femoral neuropathy, missing right knee ameliorated with a prosthesis, limitation on the use of both shoulders, elbows and wrists, pleurisy, hyper blood pressure.
4. Plaintiff's physical infirmities alleged above do both of the following:

- 1 a. Affect neurological, musculoskeletal, respiratory, cardiovascular, reproductive
- 2 and genitourinary body systems; and
- 3 b. Limit, without regard to mitigated or unmitigated measures, active or inactive
- 4 state, remissive or non-remissive condition, the following major life activities:
- 5 walking, standing, sitting, bending, sleeping, working, climbing stairs, kicking,
- 6 jumping, twisting body, running, reaching, lifting, writing, working, twisting the
- 7 wrist, shoulder and elbows, grasping, pushing, opening doors, breathing, getting
- 8 in and out of a car, working, carrying stuff and other major life activities.
- 9 5. Plaintiff has a history of impairments stated in the preceding paragraph.
- 10 6. Plaintiff is regarded as having a physical conditions that limit major life activities.
- 11 7. Because of Plaintiff's disabilities, he requires the use of facilities that are accessible
- 12 to him and have the standard accessibility features of the construction related
- 13 accessibility standards including those required by 42 U.S.C. Sec. 12101 et seq., 28
- 14 C.F.R. Part 36 and the 2010 Standards for Accessibility Design as these laws,
- 15 standards and regulations relate to Plaintiff walking, standing, sitting, bending,
- 16 sleeping, working, climbing stairs, kicking, jumping,
- 17 twisting body, running, reaching, lifting, writing,
- 18 working, twisting the wrist, shoulder and elbows,
- 19 grasping, pushing, opening doors, breathing, getting in
- 20 and out of a car, carrying stuff and working.
- 21 8. Plaintiff has been declared disabled and has been issued
- 22 a government disability placard reproduced in the
- 23 margin.
- 24 9. The effect of Plaintiff's impairments on major life
- 25 activities and, consequently, on the personal encounters
- 26 with accessibility barriers at Defendant's Hotel, must be
- 27 considered in their mitigated, unmitigated, active,
- 28 inactive, remissive or non-remissive states. 2008 ADAAA and 28 C.F.R. 36.105.




10. Defendant owns, operates, leases, or leases to a lodging business located at 2nd Street NW, Albuquerque, NM 87102 ("Hotel").

11. On or about May 23, 2020, Plaintiff travelled from his home to Albuquerque on the way to Santa Fe.

12. Prior to traveling to Albuquerque, Plaintiff reviewed numerous hotels' booking websites to help him determine which identified and described accessibility features in the hotel and the guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the given hotel or guest room met his accessibility needs.

13. Plaintiff reviewed the booking website for Defendant and discovered the following 28 C.F.R. 36.302(e)(1)(ii) identifications and disclosures documented in the following Table 2:

HOTEL WEBSITE Hotelandaluz.com
<div data-bbox="565 995 1205 1369">  <p>A N D A L U Z</p> <hr/> <p>CURIO COLLECTION BY HILTON</p> </div> <p>NO ACCESSIBILITY INFORMATION</p>
HILTON BOOKING WEBSITE https://www.hilton.com/en/hotels/abqanqg-hotel-andaluz-albuquerque/?SEO_id=GMB-QQ-ABQANQQ
<p>Accessible Amenities</p> <p>Available accessible features include:</p> <ul style="list-style-type: none"> • Accessible • Accessible business center • Accessible concierge desk • Accessible elevators

- Accessible exercise facility
- Accessible guest rooms with mobility features with entry or passage doors that provide 32" of clear width
- Accessible hotel restaurant
- Accessible meeting rooms
- Accessible parking
- Accessible public entrance
- Accessible registration desk
- Accessible route from the accessible public entrance to the accessible guestrooms
- Accessible route from the accessible public entrance to the registration area
- Accessible route from the hotel's accessible entrance to the meeting room/ballroom area
- Accessible route from the hotel's accessible public entrance to at least one restaurant
- Accessible route from the hotel's accessible public entrance to the business center
- Alarms - Audible
- Audible alerts in elevators
- Automatic opening of bedroom door from the inside
- Bathroom doors at least 32 inches wide
- Bedroom doors at least 32 inches wide (812mm)
- Braille elevator
- Closed captioning on televisions or closed captioning decoders
- Emergency Call Button on Phone
- Evacuation chair available to help evacuate a disabled person
- Grab bars in bathroom
- Hotel complies with ADA Guidelines
- Hotel complies with the Americans with Disabilities Act of 1990
- Level or ramp entrance into the building
- Lowered emergency evacuation instructions
- Lowered peep hole in door
- Lowered shelf storage
- Public Areas/Facilities accessible for physically challenged
- Roll-in Shower
- Rooms accessible to wheelchairs (no steps)
- Rubber shower mats
- Service animals welcome
- Strobe alarms
- TTY for guest use
- Valet only parking
- Visual alarm for hearing impaired
- Visual alarms for hearing impaired in hallways
- Visual alarms for hearing impaired in public areas
- Wheelchair ramp for lobby/reception access

The following features aren't available:

- Accessible parking spaces for cars in the self-parking facility
- Accessible route from the hotel's accessible public entrance to the exercise facilities
- Accessible route from the hotel's accessible public entrance to the spa
- Accessible route from the hotel's accessible public entrance to the swimming pool
- Accessible swimming pool
- Accessible transportation with advance notice
- Assistive listening devices for meetings upon request
- Van-accessible parking in the self-parking facility

14. Plaintiff personally visited Defendant's Hotel on or about May 23, 2020.

15. Upon review of the Hotel's accessibility, Plaintiff noted that the Hotel was not compliant with the ADA and implementing regulations, 28 C.F.R. 36 and 2010 Standards for Accessibility Design.

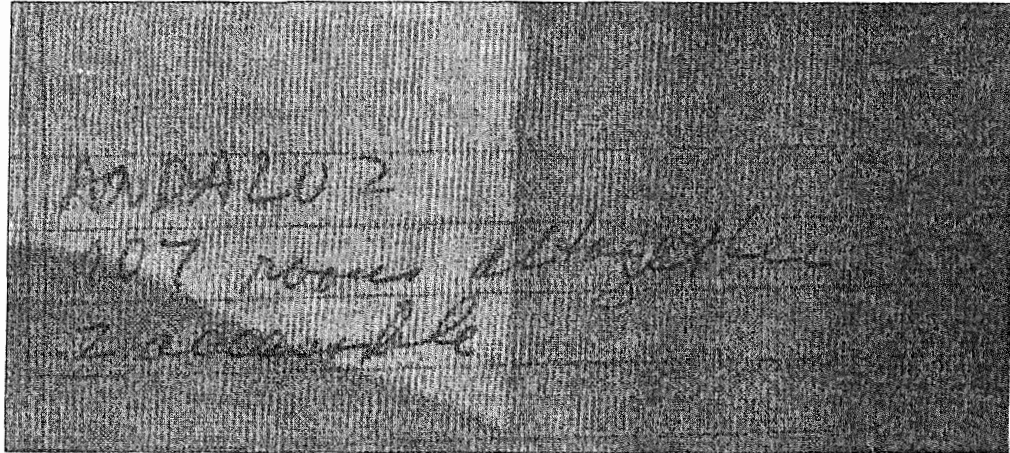
16. Plaintiff subsequently documented the following architectural barriers to accessibility:

PERSONAL ENCOUNTERS WITH BARRIERS

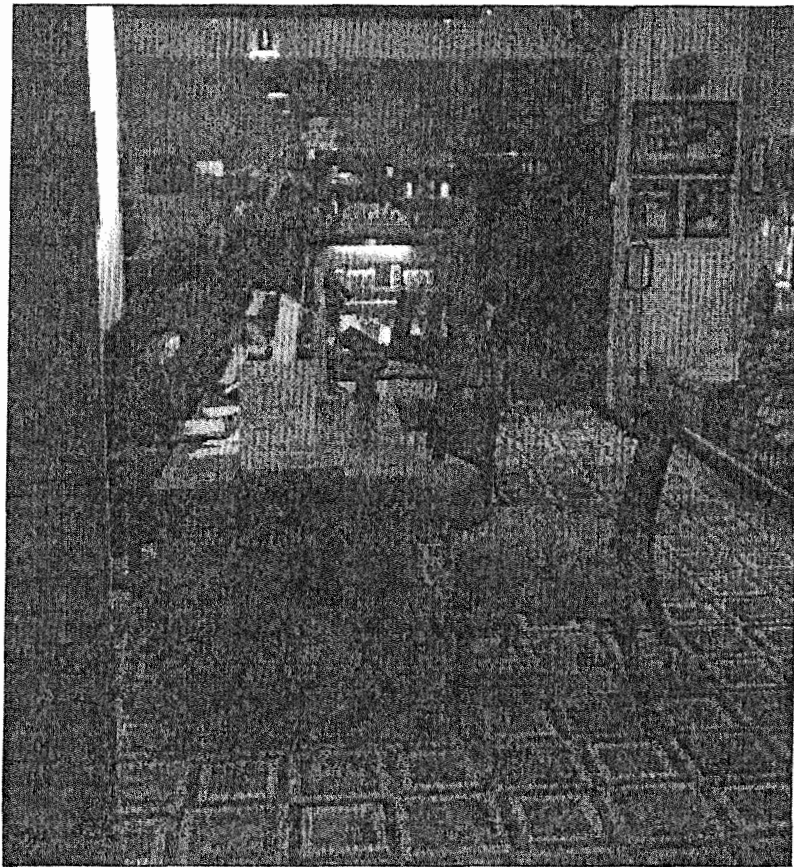


Identification.

1 The reception clerk advised Plaintiff that there are 107 rooms, but only 2 are
2 accessible. Plaintiff made the following note:



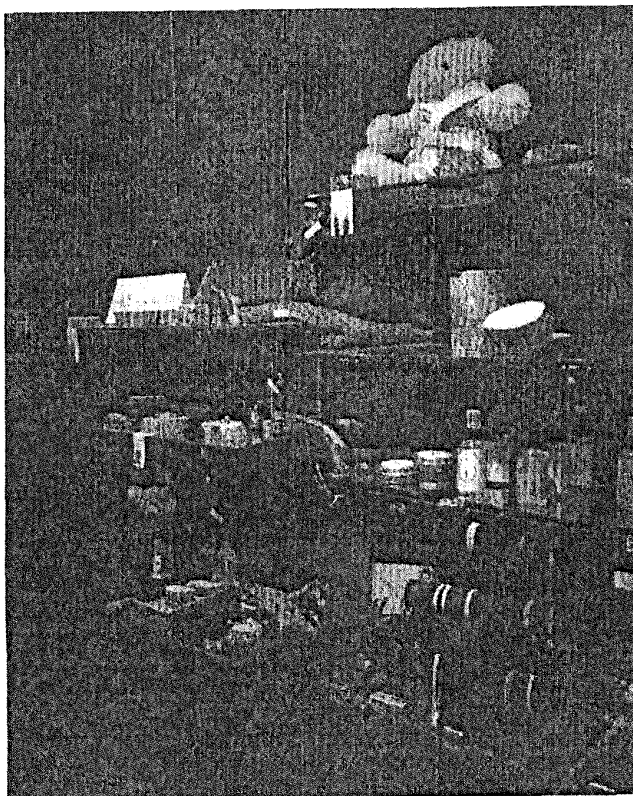
11 **Insufficient number of accessible rooms per front desk.**



28 **Inaccessible reception**

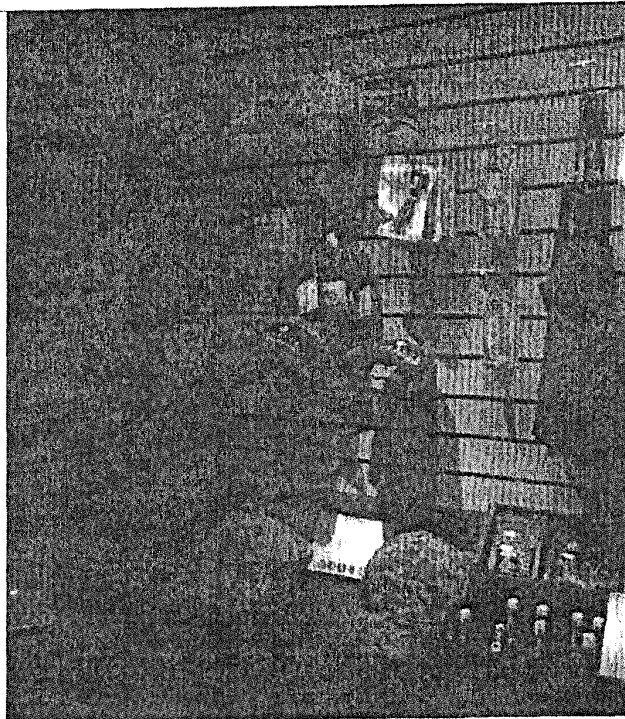


Improperly configured handrails.

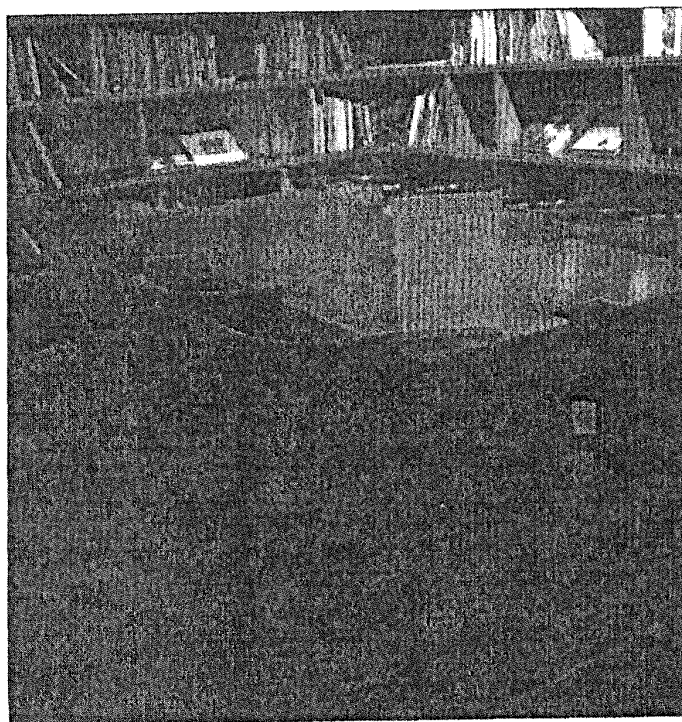


Inaccessible items in gift shop.

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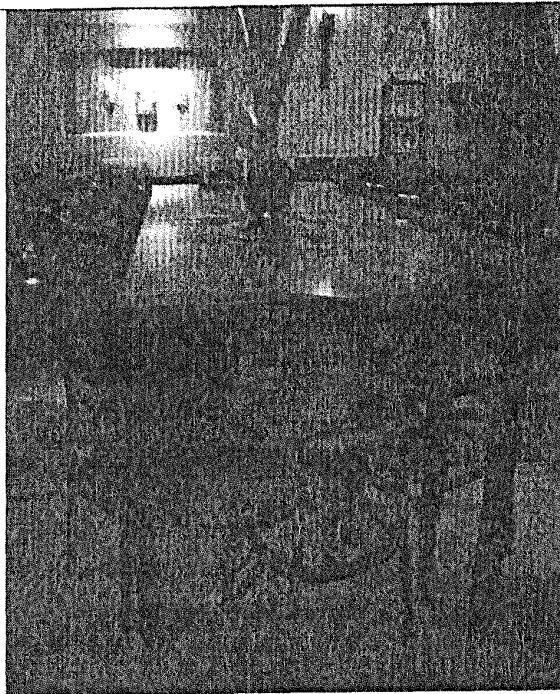


More inaccessible items in gift shop.

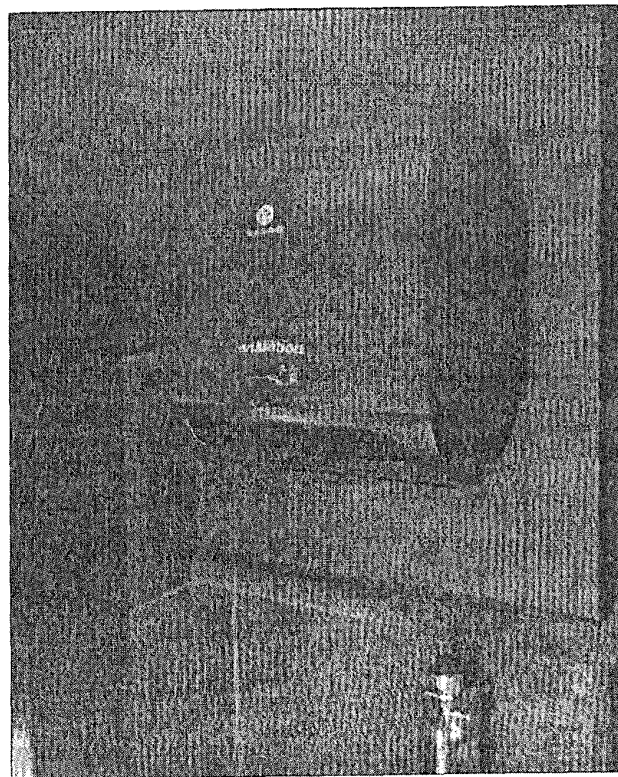


Inaccessible library seating.

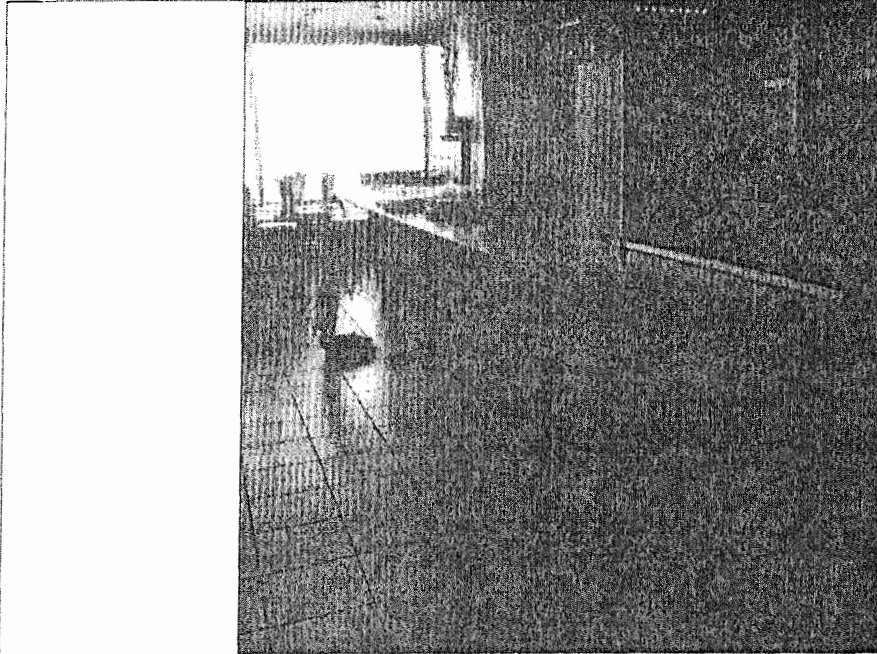
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Inaccessible lobby seating.



Inaccessible towel dispenser in lobby bathroom.



Inaccessible lobby bar.

Identification of Specific Barrier in Plain Language: As indicate below each photo.

The dates on each particular occasion on which Plaintiff encountered such barrier and which deter Plaintiff from visiting Hotel: On or about May 23, 2020.

17. Above documented inaccessible elements and routes directly interfere with Plaintiff's performance of major life activities including walking, standing, sitting, bending, sleeping, working, climbing stairs, kicking, jumping, twisting body, running, reaching, lifting, writing, working, twisting the wrist, shoulder and elbows, grasping, pushing, opening doors, breathing, getting in and out of a car, working, carrying stuff and other major life activities in a manner that deprive Plaintiff of full and equal enjoyment of the Hotel.

COUNT ONE

Violation of Plaintiff's Civil Rights under the ADA

18. Plaintiff realleges all allegations heretofore set forth.

19. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted as alleged above.

20. Plaintiff visited Defendant's booking website and Defendant's Hotel and personally encountered ADA violations documented above.

21. The Hotel's booking website readily admits that it is not accessible:

The following features aren't available:

- Accessible parking spaces for cars in the self-parking facility
- Accessible route from the hotel's accessible public entrance to the exercise facilities
- Accessible route from the hotel's accessible public entrance to the spa
- Accessible route from the hotel's accessible public entrance to the swimming pool
- Accessible swimming pool
- Accessible transportation with advance notice
- Assistive listening devices for meetings upon request
- Van-accessible parking in the self-parking facility

22. The ADA violations described above relate to Plaintiff's disability and interfere with Plaintiff's full and complete enjoyment of the Hotel.

23. Plaintiff is deterred from conducting further business with the Hotel until the Hotel has become fully compliant with the ADA.

24. The removal of accessibility barriers listed above is readily achievable.

25. As a direct and proximate result of ADA Violations, Defendant's failure to remove accessibility barriers prevented Plaintiff from equal access to the Defendant's public accommodation.

26. The issuance of injunctive relief will resolve, in part, Plaintiff's ADA claim.

WHEREFORE, Plaintiff prays for all relief as follows:

- A. Relief described in 42 U.S.C. §2000a – 3; and
- B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -
- C. Injunctive relief order to alter Defendant's place of public accommodation to make it readily accessible to and usable by ALL individuals with disabilities; and
- D. Requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by Subchapter III of the ADA; and

1 E. Equitable nominal damages; and

2 F. For costs, expenses and attorney's fees; and

3 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

4 **COUNT II**

5 **(Violation of the New Mexico's Unfair Practices Act §§57-12-1 *et seq*)**

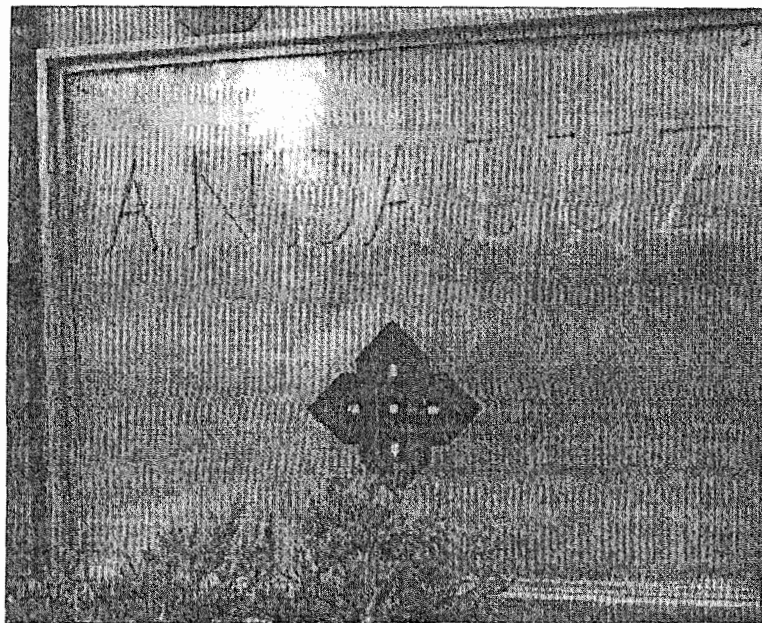
6 27. Plaintiff realleges all allegations heretofore set forth.

7 28. New Mexico's Unfair Practices Act ("UPA") prohibits the use of unfair or deceptive
8 trade practices as defined in 57-12-2.

9 ***Consumer Fraud - Brand Deceit***

10 29. Hotels, motels and other places of lodging have developed a system of deceptive self-
11 identification through the purchase and use of nationally recognizable brand names
12 such as "Holiday Inn", "Hilton", "Hyatt", "Marriott" in order to hide the true
13 ownership and operational management of the hotel or motel.

14 30. One way this deceptive self-identification is communicated to the guests and potential
15 guests is through actual identification on the property itself. For example, Defendant
16 Historic Hotel, LLC identifies itself as "Andaluz", a Hilton brand in the entrance to
17 the building, the business cards of its employees and on its website:





34. Plaintiff suffered an injury resulting from the false misrepresentation(s) and was damaged thereby in an amount of no less than \$35,000.00.

35. Defendant either intended to cause injury to Plaintiff or defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to Plaintiff.

36. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial sufficient, however, to deter this Defendant and others similarly situated from pursuing similar acts but in no event less than \$135,000.00.

Booking Website Misrepresentations and Omissions

37. The information disclosed in Hotel's Booking Website include the misrepresentations of fact (Table 2) that the Hotel is "accessible". This representation is false as evidenced in Table 3 above.

38. Defendant's lack of recognition of the rights of the disabled displayed in its marketing website, and its treatment of disabled individuals as fully bodies, is socially reprehensible and displays Defendant's ableism and segregationism.

39. Defendant's conduct alleged in this Count and elsewhere in this Complaint is reprehensible and requires a strong deterrent action in the form of punitive damages¹.

WHEREFORE, Plaintiff prays for relief pursuant to 57-12-10 as follows:

A. Injunctive relief requiring Defendant to remediate its unfair and discriminatory practices; and

¹ *Bogle v. Summit Inv. Co.*, 137 N.M. 80, 107 P.3d 520 (N.M. App. 2005). These objectives are of critical importance in the ADA context where Plaintiffs have no monetary recourse other than the imposition of equitable nominal damages under the ADA and where compensatory damages may be *de minimis* or difficult to quantify under negligence law. *Akins v. United Steel Workers, AFL-CIO, CLC Local 187*, 148 N.M. 442, 237 P.3d 744 (NM 2010). *See also Sanchez v. Clayton*, 117 N.M. 761, 767, 877 P.2d 567, 573 (1994) ("Indeed, if the defendant's conduct otherwise warrants punitive liability, the need for punishment or deterrence may be increased by reason of the very fact that the defendant will have no liability for compensatory damages." (citing 1 Dan B. Dobbs, *Law of Remedies* § 3.11(10), at 515-16 (2d ed. 1993))). The present case is illustrative where a compensatory award against the Hotel may be *de minimis* or difficult to quantify. *Compare with Akins*. "The present case is illustrative; a compensatory award against the Union of a mere \$1,661 would hardly deter similar outrageous conduct against other Union members in the future."

1 B. For damages in an amount to be proven at trial, but in no event less than
2 \$35,000.00; and

3 C. For punitive damages in an amount commensurate with Defendant's
4 reprehensible conduct and the need for deterrence of similar conduct by others,
5 but in no event less than \$50,000.00; and

6 D. For costs and attorney's fees; and

7 E. For leave to amend this Complaint to add class action allegations; and

8 F. For such other and further relief as the Court may deem just and proper.

9 **COUNT III**

10 **Negligence**

11 40. Plaintiff realleges all allegations heretofore set forth.

12 41. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that Plaintiff
13 as a disabled individual would have full and equal access to the public
14 accommodation.

15 42. Defendant breached this duty.

16 43. Defendant is or should be aware that, historically, society has tended to isolate and
17 segregate individuals with disabilities, and, despite some improvements, such forms
18 of discrimination against individuals with disabilities continue to be a serious and
19 pervasive social problem².

20 44. Defendant knowingly and intentionally participated in this historical discrimination
21 against Plaintiff, causing Plaintiff damage.

22 45. Discrimination against individuals with disabilities persists in the use and enjoyment
23 of critical public accommodations³.

24 46. Defendant's knowing and intentional persistence in discrimination against Plaintiff
25 and similarly situated persons caused Plaintiff damage by preventing him from
26 lodging at Defendant's Hotel.

27
28 ² 42 U.S.C. §12101(a)(2)

³ 42 U.S.C. §12101(a)(3)

1 47. Individuals with disabilities, including Plaintiff, continually encounter various forms
 2 of discrimination, including outright intentional exclusion, the discriminatory effects
 3 of architectural, overprotective rules and policies, failure to make modifications to
 4 existing facilities and practices, exclusionary qualification standards and criteria,
 5 segregation, and relegation to lesser services, programs, activities, benefits, jobs, or
 6 other opportunities⁴.

7 48. Defendant's knowing and intentional discrimination against Plaintiff reinforces above
 8 forms of discrimination, causing Plaintiff damage.

9 49. Census data, national polls, and other studies have documented that people with
 10 disabilities, as a group, occupy an inferior status in our society, and are severely
 11 disadvantaged socially, vocationally, economically, and educationally⁵.

12 50. Defendant's knowing and intentional discrimination has relegated Plaintiff to an
 13 inferior status in society, causing Plaintiff damage.

14 51. The Nation's proper goals regarding individuals with disabilities are to assure equality
 15 of opportunity, full participation, independent living, and economic self-sufficiency
 16 for such individuals⁶.

17 52. Defendant's knowing, and intentional discrimination has worked counter to our
 18 Nation's goals of equality, causing Plaintiff damage.

19 53. Continued existence of unfair and unnecessary discrimination and prejudice denies
 20 people with disabilities the opportunity to compete on an equal basis and to pursue
 21 those opportunities for which our free society is justifiably famous, and costs the
 22 United States billions of dollars in unnecessary expenses resulting from dependency
 23 and nonproductivity⁷.

24 54. Defendant's knowing and intentional unfair and unnecessary discrimination against
 25 Plaintiff demonstrates Defendant's knowing and intentional damage to Plaintiff.

26 55. Plaintiff has been damaged by Defendant's negligence in an amount to be proven at
 27 trial, but in no event less than \$35,000.00.

28 ⁴ 42 U.S.C. §12101(a)(5)

⁵ 42 U.S.C. §12101(a)(6)

⁶ 42 U.S.C. §12101(a)(7)

⁷ 42 U.S.C. §12101(a)(8)

1 56. Defendant's breach of duty caused Plaintiff damages including, without limitation,
 2 the feeling of segregation, discrimination, relegation to second class citizen status the
 3 pain, suffering and emotional damages inherent to discrimination and segregation and
 4 other damages to be proven at trial.

5 57. According to New Mexico common law, punitive damages serve two important
 6 policy objectives under our state common law: to punish reprehensible conduct
 7 and to deter similar conduct in the future.

8 58. By violating Plaintiff's civil rights, Defendant engaged in intentional, aggravated and
 9 outrageous conduct.

10 59. The ADA has been the law of the land since 1991, but Defendant engaged in a
 11 conscious action of a reprehensible character, that is, Defendant denied Plaintiff his
 12 civil rights, and cause him damage by virtue of segregation, discrimination, relegation
 13 to second class citizen status the pain, suffering and emotional damages inherent to
 14 discrimination and segregation and other damages to be proven at trial.

15 60. Defendant either intended to cause injury to Plaintiff or defendant consciously
 16 pursued a course of conduct knowing that it created a substantial risk of significant
 17 harm to Plaintiff.

18 61. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial
 19 sufficient, however, to deter this Defendant and others similarly situated from
 20 pursuing similar acts, and in no event less than \$50,000.00.

21 **WHEREFORE**, Plaintiff prays for relief as follows:

- 22 A. For finding of negligence and/or negligence per se; and
- 23 B. For damages in an amount to be proven at trial; and
- 24 C. For punitive damages to be proven at trial; and
- 25 D. For such other and further relief as the Court may deem just and proper.

26 ///

27 ///

REQUEST FOR TRIAL BY JURY

Plaintiff respectfully requests a trial by jury in issues triable by a jury.

DATED this 3rd day of August, 2020.

PETER STROJNIK



Plaintiff

7847 N. Central Avenue

Phoenix, AZ 85020

602-524-6602